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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,155	08/28/2001	Michael Rosen	717-001	4608
7590	10/31/2006		EXAMINER POINVIL, FRANTZY	
Ward & Olivo 708 Third Ave New York, NY 10017			ART UNIT 3692	PAPER NUMBER

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/941,155	ROSEN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Frantzy Poinvil	3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 January 2002.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-46 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-46 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____. _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Fernholz (US Patent No. 5,819,238).

As per claim 1, Fernholz discloses an apparatus and method for automatically modifying a financial portfolio through dynamically re-weighting based on a non-constant function of current capitalization weights. See the abstract. In so doing, Fernholz discloses a balancing system use with the financial markets. The system comprises:

A first booking interface for processing trade information received from clients and a second booking interface for processing trade information received from external systems (see column 7, lines 19-61);

At least one database for storing and comparing information received by the first and second booking interfaces; a processing interface for receiving the trade information from the first and second booking interfaces, logging the trade information into the database and validating the trade information (column 8, lines 8-62);

Wherein the processing interface compares the trade information from the first booking interface to trade information from the second booking interface, wherein the validating includes verifying unmatched pairs of the trade information; wherein the system provides an output identifying the unmatched pairs of the trade information; and wherein the balancing system functions in real time (column 9, line 55 to column 10, line 25 and column 12, lines 2-63).

As per claims 2-6 and 12, 20-23, 36-40 and 46 the databases of Fernholz include means or functions for storing, sorting and retrieving product information, trade configuration and allocation rules. See figures 3, 5, 6, 8 and 9 of Fernholz.

As per claims 7-11, see figures 1a-1c of Fernholz.

As per claim 13, Fernholz discloses an apparatus and method for automatically modifying a financial portfolio through dynamically re-weighting based on a non-constant function of current capitalization weights. See the abstract. In so doing, Fernholz discloses a balancing system use with the financial markets. The system comprises:

Interfaces for receiving information from external sources, balancing module for exchanging information with external interfaces and at least one database for storing the information and a user interface to allow interaction with the system (see figures 1a-1c); wherein the balancing module compares the information received from the database and the information received from the interfaces; wherein the balancing module identifies incompatible information; and wherein the system provides output

through the user interface notifying a user of the incompatible information. See column 9, line 55 to column 10, line 25 and column 12, lines 2-63.

As per claims 14-15, the system of Fernholz includes secondary interfaces to exchange market data information from OMS, OCS, CT and OASYS or with an outside firm's OMS. See figure 1 of Fernholz.

As per claims 16 and 24, see column 12, lines 2-63.

As per claim 17, see column 5, lines 1-36.

As per claim 35, Fernholz discloses an apparatus and method for balancing orders, executions and allocations associated with trading on the financial markets.

See the abstract. In so doing, the system comprises:

Client-side booking for processing trade information from clients;

Clearance-side booking interface for processing trade information received from external systems; at least one database for storing and information received by the client-side booking interface and the clearance-side booking interface (see figures 1a-1d);

Wherein, the trade processing framework compares the trade information from the client-side booking interface to the trade information from the clearance-side booking interface; wherein the validating includes identifying unmatched pairs of the trade information; wherein the system provides an output identifying the unmatched pairs of the trade information; and wherein the balancing system function in real-time (see column 9, line 55 to column 10, line 25 and column 12, lines 2-63).

As per claims 18 and 31, inherently, the system of Fernholz must comprise a backup database or a primary database for storing, sorting and receiving information and a secondary database used primarily for protection against loss of the information from the primary database or against failure of a database. These databases are relational or object oriented databases.

As per claims 19 and 32-34, the databases being types of relational or object oriented databases are inherent features in the system of Fernholz so as to allow quick sorting, retrieval and linking of the different databases or tables within the system of Fenrholz.

As per claims 25-30, see figures 1-5 of Fernholz.

As per claims 41-45, see figures 1-5 of Fernholz.

### ***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantzy Poinvil whose telephone number is (703) 305-9779. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sam Sough can be reached on (703) 308-0505. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**Frantzy Poinvil**  
**Primary Examiner**  
**Art Unit 3628**

FP  
September 15, 2006